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MAE News: Newsletter from the Office of Monitoring, Audit and Enforcement, Summer 2009

Maine Workers' Compensation Board

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MAE NEWS

Newsletter from the Office of Monitoring, Audit and Enforcement Maine Workers' Compensation Board

Summer 2009

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Governor Baldacci Signs Workers' Compensation Legislation

LD 620, An Act To Ensure the Workers' Compensation Board's Regulatory Oversight of the Maine Insurance Guaranty Association

The legislation was sponsored by Sen. Phil Bartlett (D-Cumberland). The law ensures that the Maine Insurance Guaranty Association, the entity that takes over if an insurance company goes bankrupt, is accountable to the Workers' Compensation Board just as is any other insurance company.

"This law will hold the Maine Insurance Guaranty Association to the same standards of service to injured workers as other insurance companies," Governor Baldacci said. "This includes meeting such standards as making payments within a reasonable time so that workers do not experience a disruption in payments."

The signing occurred in the Governor's Office with many co-sponsors and supporters of the legislation present. The law is effective 90 days following adjournment of the 124th Legislature, First Regular Session.

Zurich, the Maine Office of the Attorney General, and the Maine Bureau of Insurance Sign Consent Agreement

The Maine Bureau of Insurance recently posted a Consent Agreement signed by Zurich, the Maine Office of the Attorney General and the Maine Bureau of Insurance to its website: http://www.maine.gov/pfr/insurance/consent_agreements/09205.htm

The Board's June 28, 2005 Compliance Audit Report (the "Report") reflected that Zurich did not timely and accurately file WCB forms or pay indemnity claims in violation of Title 39-A M.R.S.A. Section 359(2). On August 29, 2005, the WCB certified such findings to the Superintendent of Insurance.

Maine Bureau of Insurance staff subsequently performed a targeted market conduct examination to determine whether the violations of Title 39-A M.R.S.A. Section 359(2) found by the WCB still existed as of the time of the Examination.

During the course of the Examination, Bureau staff found that, compared to the findings of the Report as to its claims-handling practices in Maine, for the period of the Examination, Zurich's:

- a. form filing compliance had improved in some respects, decreased in others, and remained unacceptably low,
- b. initial indemnity benefit timeliness had improved but remained below the WCB benchmark, and
- c. indemnity benefit payment accuracy remained unacceptably low.

Consent agreements are one way that the Bureau of Insurance may address a violation of Maine law without a hearing. The consent agreement is a settlement of the matter through negotiation and can involve fines, or specific actions against a license.



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Fall Training Sessions to Be Held In Augusta

The Board's open training sessions will take place on **October 7 and 8, 2009** in the Elkins Training Room on the campus of the former Augusta Mental Health Institute (AMHI). The Elkins Training Room can be found in Room 110 of the Williams Pavilion, which is a building connected to the Eastside Wellness Center ("the gym") on the AMHI campus across from Riverview Psychiatric Center.

The October 7th session will present the Basic Compliance program that provides an overview of EDI reporting issues as well as basic forms and payment compliance training. The October 8th session will present the Advanced Compliance program that provides AWW and partial benefit calculation training as well as a workers' compensation case study.

To sign up for one or more of these sessions, contact Anne Poulin at (207) 287-7067 or send her an e-mail at Anne.Poulin@maine.gov. Also, if your company is in need of personalized training on form filing or other compliance issues, please contact Anne. We can design our training to suit your needs.

Enhanced Quarterly Report

The Monitoring Division has added a new compliance performance indicator for lost time First Report of Occupational Injury or Disease (FROI) filings to its Quarterly Compliance Report. The Detailed Claims Section now indicates the date that each lost time FROI was received by the Board and its filing compliance.

The Detailed Claims Section has also been expanded to include return to work information. Any claim with a return to work date greater than 7 days should either be paid or denied, and as such, compliance will appear separately in the Initial Payment and MOP or NOC columns of the report.

Other enhancements to the report include new sort features. Each of the three sections of the quarterly report are now sorted by the claim administrator name and all entities or rating companies that the claim administrator is submitting claims on behalf of. There is also a secondary sort within each section on the claim administrator file number. These new sort features should make it easier for claim administrators to identify claims and verify compliance.

Monitoring is also in the process of updating its Reconciliation Processing Guide and this will be available shortly. This guide is a tool for claim administrators to understand each section of the quarterly report, to identify inaccurate data that appears on the report and provide missing or required data for compliance measurements.

New Instructions and Appendix Available for Completing the Memorandum of Payment (WCB-3)

The Forms and Petitions Manual has been updated to include new instructions for completing the WCB-3 form and a new appendix (H) that addresses the 7-day waiting period.

A review of audit data has revealed that the WCB-3 can be a confusing form for many claim administrators. These new instructions are intended to assist claim administrators in completing this form correctly.

The new instructions and appendix are available at:

<http://maine.gov/wcb/petitions/wcb3Inst.html>
http://maine.gov/wcb/departments/mae/formsmanual/Appendix_H_new.rtf



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LD 946, An Act to Reverse the Effects of Grant v. Central Maine Power, Inc. on Workers' Compensation

The Board is currently working on the implementation of this bill enacted by the People of the State of Maine as follows:

Sec. 1. 39-A MRSA §205, sub-§9, ¶B, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

B. In all circumstances other than the return to work or increase in pay of the employee under paragraph A, if the employer, insurer or group self-insurer determines that the employee is not eligible for compensation under this Act, the employer, insurer or group self-insurer may discontinue or reduce benefits only in accordance with this paragraph.

(1) If no order or award of compensation or compensation scheme has been entered, the employer, insurer or group self-insurer may discontinue or reduce benefits by sending a certificate by certified mail to the employee and to the board, together with any information on which the employer, insurer or group self-insurer relied to support the discontinuance or reduction. The employer may discontinue or reduce benefits no earlier than 21 days from the date the certificate was mailed to the employee, except that benefits paid pursuant to section 212, subsection 1 or section 213, subsection 1 may be discontinued or reduced based on the amount of actual documented earnings paid to the employee during the 21-day period if the employer files with the board the documentation or evidence that substantiates the earnings and the employer only reduces or discontinues benefits for any week for which it possesses evidence of such earning. The certificate must advise the employee of the date when the employee's benefits will be discontinued or reduced, as well as other information as prescribed by the board, including the employee's appeal rights.

(2) If an order or award of compensation or compensation scheme has been entered, the employer, insurer or group self-insurer shall petition the board for an order to reduce or discontinue benefits and may not reduce or discontinue benefits until the matter has been finally resolved through the dispute resolution procedures of this Act, any appeal proceedings have been completed and an order of reduction or discontinuance has been entered by the board. Upon the filing of a petition, the employer may discontinue or reduce the weekly benefits being paid pursuant to section 212, subsection 1 or section 213, subsection 1 based on the amount of actual documented earnings paid to the employee after filing the petition. The employer shall file with the board the documentation or evidence that substantiates the earnings and the employer may discontinue or reduce weekly benefits only for weeks for which the employer possesses evidence of such earnings.

Sec. 2. Retroactivity. This Act applies retroactively to all injuries including pending cases and cases on appeal.

The law is effective 90 days following adjournment of the 124th Legislature, First Regular Session.

Updated Appendix for Calculation of Benefits

Appendix B of the Forms and Petitions Manual has been expanded to include the calculation of total benefits and is available at:

http://maine.gov/wcb/departments/mae/formsmanual/APPENDIX_B_revised_32009.rtf



Cost of Living (COLA) Adjustments

COLA adjustments are applicable to claims with pre 1-1-1993 dates of injury only. The correct COLA application date depends on the date of the injury as follows:

- Injuries prior to 1-1-72 do not receive COLA adjustments.
- All injuries from 1-1-72 through 6-30-83 receive annual COLA adjustments on July 1st.
- All injuries (except those at max at the time of injury) from 7-1-83 through 6-29-85 receive annual COLA adjustments on their own anniversaries. Employees at max at the time of injury receive annual COLA adjustments on July 1st.
- All injuries from 6-30-85 through 11-19-87 (except those at max at the time of injury) receive annual COLA adjustments on their own anniversaries. Employees at max at the time of injury receive annual COLA adjustments on July 1st, but are subject to new annual maximum benefit levels that are effective each August 1st (beginning in 1988).
- All injuries from 11-20-87 through 12-31-92 (except those at max at the time of injury) receive annual adjustments beginning on their third anniversary. Employees at max at the time of injury are not subject to the three year wait and will always receive annual COLA adjustments on July 1st. However, no COLA adjustments are applied for purposes of calculating partial incapacity benefits.

More COLA details and a revised Appendix A are available at:

<http://www.maine.gov/wcb/departments/payments/cola.htm>
http://maine.gov/wcb/departments/mae/formsmanual/Appendix_A_revised_7809.rtf

Claims at “Max”

While there are no COLA adjustments for post **12-31-92** dates of injury (see above), claims being paid at the maximum weekly benefit level (maximum rate) are subject to an inflation adjustment or escalation on or about **7-1** of each year. The maximum for injuries occurring on or after January 1, 1993 is as follows:

<u>January 1, 1993 through June 30, 1999</u>	\$441.00
<u>July 1, 1999 through June 30, 2000</u>	\$441.10
<u>July 1, 2000 through June 30, 2001</u>	\$458.83
<u>July 1, 2001 through June 30, 2002</u>	\$471.76
<u>July 1, 2002 through June 30, 2003</u>	\$491.35
<u>July 1, 2003 through June 30, 2004</u>	\$506.42
<u>July 1, 2004 through June 30, 2005</u>	\$523.20
<u>July 1, 2005 through June 30, 2006</u>	\$542.40
<u>July 1, 2006 through June 30, 2007</u>	\$555.34
<u>July 1, 2007 through June 30, 2008</u>	\$574.08
<u>July 1, 2008 through June 30, 2009</u>	\$596.42
July 1, 2009 through June 30, 2010	\$616.74

The Board tracks claims subject to the maximum rate to ensure that injured employees are being paid at the correct rate and to ensure that WCB-4 forms are filed to document any changes in the weekly compensation rate.

More maximum rate details and instructions are available at:

<http://www.maine.gov/wcb/departments/payments/saww.htm>

Reminder: failure to pay accrued weekly benefits within 30 days after becoming due and payable is subject to penalty under Section 205(3).

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